

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF OKLAHOMA**

## ORDER

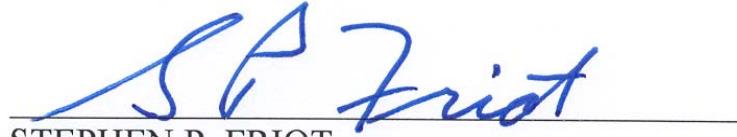
On April 4, 2007, United States Magistrate Judge Gary M. Purcell issued a Report and Recommendation, wherein he recommended that defendant's motion to dismiss plaintiff's civil rights action brought pursuant to Bivens v. Six Unknown Named Agents of Fed. Bureau of Narcotics, 403 U.S. 388 (1971), be granted. Magistrate Judge Purcell concluded that plaintiff had failed to state a claim of an Eighth Amendment violation and that qualified immunity should be granted to defendant.

Presently before the court is plaintiff's timely objection to the Report and Recommendation. The court has conducted a *de novo* review of the matter pursuant to 28 U.S.C. § 636(b)(1). Having done so, the court concurs with the analysis and recommendation of Magistrate Judge Purcell. The court finds plaintiff's objection to be without merit. The court therefore accepts, adopts and affirms Magistrate Judge Purcell's Report and Recommendation.

Accordingly, the Report and Recommendation issued by Magistrate Judge Gary M. Purcell on April 4, 2007 (doc. no. 62) is **ACCEPTED**, **ADOPTED**, and

**AFFIRMED.** Defendant's Motion to Dismiss, filed February 20, 2007 (doc. no. 48), is **GRANTED**. Plaintiff's civil rights action is dismissed pursuant to Fed. R. Civ. P. 12(b)(6), Fed. R. Civ. P. and 28 U.S.C. § 1915(e)(2)(B). Upon affirmance or waiver of the right to appeal, the dismissal of plaintiff's civil rights action will count as a "strike" for purposes of 28 U.S.C. § 1915(g).

Entered this 25<sup>th</sup> day of April, 2007.



STEPHEN P. FRIOT  
UNITED STATES DISTRICT JUDGE

06-0228p002(pub).wpd